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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
JEANTY, ROMAIN	

ART UNIT	PAPER NUMBER
3624	

MAIL DATE	DELIVERY MODE
02/26/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/716,477	PANDIT, RAM	
	Examiner	Art Unit	
	Romain Jeanty	3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 November 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-7,9-13 and 15-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 3-7, 9-13, and 15-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This Final Office Action is in response to the Amendment filed on November 12, 2008. Claims 1, 5, 7, 13, 15-18 have been amended, claims 2, 8, 14, have been cancelled. Claims 1, 3-7, 9-13, and 15-18 are pending in the application.

Response to Amendment

2. Applicant's amendment to claim 13 has overcome the 35 U.S.C. 112, second paragraph. The rejection has been withdrawn.

Response to Arguments

3. Applicant's arguments filed on November 12, 2008 have been fully considered but they are not persuasive.

Applicant has amended the claim to recite determining whether assigning a load to the first segment of the tour will produce a cost savings over assigning the load to a common Carrier; and in response, assigning the load to the first segment of the tour if it will produce a cost savings over the common carrier. Applicant is directed to the rejection in paragraph 7 below.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement

thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1, 3-6 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Applicant has amended claim 1 to recite a computer implemented. However, the examiner notes that the amendment does not correct the *rejection* because Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to a machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In re Bilski et al, 88 USPQ 2d 1385 CAFC (2008); Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps fail the first prong of the new Federal Circuit decision since they are not tied to a machine and can be performed without the use of a particular machine.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 1, 3-7, 9-13, and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatented over Parker (Patent No. 7,251,612) in view of Wolfe et al (U.S. Patent No. 7,212,984) and (Cyclic Transfer Algorithms for Multivehicle Routing and Scheduling Problems).

Regarding claims 1, and 5-6, 11-12, and 17-18, Parker teaches a computer-based methods for scheduling the distribution of products. In so doing, Parker teaches creating a first schematic, wherein the first schematic comprising a lane between a first accent point and a second accent point, creating a tour as an instance of the schematic, wherein the tour comprises at least a segment corresponding to the lane of the schematic (See Figure 16; col. 4, lines 21-47). Parker fails to explicitly disclose assigning a load to the first segment of the tour. Wolfe et al in the same field of endeavor, discloses the concept of assigning a load to a truck to be traveled to a destination). Note col. 9, lines 35-63 of Wolfe et al. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the

teachings of Parker to include the teachings of Wolfe et al in order to provide virtual capacities to a provider of services.

Applicant has amended the claims to recite determining whether assigning a load to the first segment of the tour will produce a cost savings over assigning the load to a common Carrier, and in response, assigning the load to the first segment of the tour if it will produce a cost savings over the common carrier.

Official Notice is taken that using a common carrier to transport goods, rather than a dedicated fleet, is old and well known in the art.

Thompson teaches determining whether to transfer loads to the first segment of a tour will produce a cost savings over a common carrier (See page 936 column 1 paragraph 2 under section 1). Here Thompson discusses the concept of cyclic transfers – i.e. transferring loads among routes to determine if there is a cost savings. The idea behind cyclic transfers is to determine if the cost of using a route is cheaper (i.e. lower cost) and then transferring it. The goal of Thompson is to minimize transportation costs by analyzing the various segments to determine how goods may be transported more cheaply if a particular route is used. The combination of the Official Notice regarding the use of common carriers and cyclic transfers would have been obvious to one of ordinary skill in the art because it would have provided a predictable result through determining whether common carriers (i.e. a particular route) would have provided a cost savings, and if so, minimizing costs by assigning that particular route to a common carrier.

Parker, Wolfe, Thompson and the Official Notice all address issues related to improving transportation and logistics, thus they are all analogous art.

A person of ordinary skill in the art at the time of the invention would have modified the teachings of Parker and Wolfe to include the teachings of Thompson and Official Notice because it would have provided a predictable result in combination with the logistics and transportation teachings of Parker and Wolfe.

Regarding claims 3, 9 and 15, Parker further discloses the method of claim 1, further comprising performing tour optimization on the tour (col. 1, lines 45-66).

Regarding claims 4, 10 and 16 Parker further discloses the method of claim 1, wherein creating the first schematic further comprises creating the first schematic based on a load history (col. 1, lines 24-46).

Clam 7 is substantially parallel of the system steps of claim 1; therefore claim 1 is rejected for the same aforementioned reasons.

Claim 13 is an article of manufacture containing instructions for tour planning, the instructions being executed by a computer to perform the steps of method claim 1 above; therefore claim 13 is rejected for the same aforementioned reasons indicated in claim 1 above.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Manning et al (US Patent No. 6,604,081) discloses the total cost associated with all of the freight loads carried during the round trip are apportioned among each of the freight loads based on the revenue contribution of the load, the total revenue from the round trip, the actual cost associated with the load, and the total cost of the round trip.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROMAIN JEANTY whose telephone number is (571)272-6732. The examiner can normally be reached on Mon-Thurs 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Van Doren can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Romain Jeanty/
Primary Examiner
Art Unit 3624

/RJ/

February 9, 2009